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OFFICE OF PETITIONS

In re Application of :
Averbuj et al. :
Application No. 10/630,480 : DECISION ON PETITION
Filed: 29 July, 2003 :
Attorney Docket No. 030198 :

This is a decision in reference to the communication filed on 28 January, 2005, which is treated as a petition under 37 CFR 1.53 requesting that the above-identified application, including 11 sheets of drawings, be accorded a filing date of 29 July, 2003.

The petition is granted.

On 29 July, 2003, the application was filed.

On 24 September, 2004, Initial Patent Examination Division mailed a Notice of Incomplete Nonprovisional Application, stating that the application had been deposited without drawings, and that applicant should reconsider whether drawings are necessary under 35 U.S.C. § 113 (first sentence). The Notice stated that the filing date would be the date of receipt of the missing drawings. An executed oath or declaration in accordance with 37 CFR 1.63 was also required. A two (2)-month period for reply was set.

In response, on 28 January, 2005, the present petition and a copy of 11 sheets of drawings, were filed. Petitioners argue that 11 drawing sheets were filed with the other application papers on 29 July, 2003, but were subsequently misplaced in the U.S. Patent and Trademark Office (Office). In support, a copy of petitioners' postcard receipt was supplied with the present petition. The postcard receipt shows an Office-date stamp of 07/29/03 containing the above-identified application number, and identifies the application by the first named inventor's last name and attorney docket number, and acknowledges receipt of, *inter alia*, "formal drawings in 11 pages". Petitioners request

that the application, including the 11 sheets of drawings, be accorded a filing date of 29 July, 2003.

A review of the record reveals that no sheets of drawings received on 29 July, 2003, are located among the application papers received on that date. However, the evidence is convincing that the application papers deposited on 29 July, 2003, included 11 sheets of drawings, which were subsequently misplaced in the Office. Therefore, the application, including 11 sheets of drawings, is entitled to a filing date of 29 July, 2003.

In view of the above, the petition is granted. As the petition was necessitated by an error on the part of the Office, no petition fee is due and none has been charged.

The application will be processed with the copy of the 11 sheets of drawings supplied on 28 January, 2005, as a part of the original disclosure.

The Notice of Incomplete Nonprovisional Application mailed on 24 September, 2004, is withdrawn to the extent that it stated that the application had been deposited without drawings. Additionally, petitioners should note that an extension of time is not appropriate when an application is incomplete. As such, the extension of time filed on 28 January, 2005, will be credited to counsel's deposit account, No. 17-0026.

Receipt of the declaration and late-filing surcharge on 28 January, 2005, is acknowledged.

The application is being referred to Initial Patent Examination Division for further processing with a filing date of 29 July, 2003, using the application papers filed on that date, and the copy of 11 sheets of drawings supplied with the present petition, and for an indication in Office records that 11 sheets of drawings were present on filing.

Telephone inquiries should be directed to the undersigned at 571-272-3231.



Douglas I. Wood
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Office of Petitions